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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,311	07/31/2003	Louis Kovach	69010-319	1877

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EXAMINER

MCCARRY JR, ROBERT J

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/631,311

Applicant(s)

KOVACH ET AL

Examiner

Robert J. McCarry, Jr.

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-31 is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 13, 15 and 31-36 of copending Application No. 10/617003. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications show the same features. Claim 1 of application number 10/631311 shows the features of claims 1 and 6 of application 10/617003. It would have been obvious to one of ordinary skill to see that claims 1 and 6 would be combinable as shown in claim 1 of application 10/631311. The same can be said of claim 4 of application 10/631311. Claim 4 shows the same features of claims 4 and 5 of application 10/617003. It would have been obvious to one of ordinary skill to see that claims 4 and 5 are combinable as shown in claim 4 of application 10/631311.

Claim 11 of application 10/631311 shows the same features as claim 31 of application 10/617003. However, claim 11 recites the features of selection devices being used while claim 31 recited the use of pushbuttons. It would be obvious to one of ordinary skill in the art that pushbuttons are a type of selection device and since claim 11 is broader than claim 31 it would also be obvious to one of ordinary skill that pushbuttons would be included as a type of selection device. Claim 11 of application 10/631311 also recites the step of selecting a form for a control signal. It would have been obvious to one of ordinary skill to understand that if the user can select various command signals, as stated in claim 31 of application 10/617003, then they would therefore be selecting a form for the signal.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al (US 5,749,547).

Young et al discloses a control system for operating a model train comprised of a remote control transmitter 12 having a plurality of pushbutton selection devices for controlling operating features of the train including speed, braking and various sounds.

The pushbutton transmitter is connected by radio frequency to a control operative 14, which then sends a DC offset waveform signals through the track 16 and received on the locomotive by a receiver 26. The remote control 12 is in communication with a microprocessor which uses a plurality of switches to modulate the waveform of the signal through the track 16, as stated in column 4, lines 50-53. Also stated in column 4 lines 10-25 MOSFET transistors are used to induce the switching controlled by the microprocessor. The signal is also modified using a shift key method as discussed in column 7 lines 4-10. The control operative 14 and transformer 20 monitors the voltage to the track using a voltage sensor and a zero-cross sensor, thereby determining the speed and direction of the train as the signals are received from the remote control 12. The signals are also queued into the control operative 14 and transformer 20 so as to operate in the order the signals were received. The system is further comprised of the feature to switch between various trains to be controlled, as stated in column 3 line 63.

Regarding claims 13-16 drawn to the method of operating the system. Young et al provides a remote control transmitter for communicating signals to a model train by RF means. The signals are sent through a control circuit and the signal waveform is modulated using a frequency shift method and the control signals are produced and sent to the train using a DC offset signal.

***Allowable Subject Matter***

Claims 17-31 are allowed.

### ***Response to Arguments***

Applicant's arguments filed September 13, 2004 have been fully considered but they are not persuasive. As recited above, the remote control is in communication with a microprocessor which uses a plurality of switches to modulate the waveform of the signal through the track 16, as stated in column 4, lines 50-53. The waveform sent through the track controls the operation of the train with signals received from the remote control.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 10:00am to 3:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM

November 10, 2004

  
ROBERT J. McCARRY, JR.  
PATENT EXAMINER  
3617

  
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